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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,734	01/23/2004	Robert J. Burnett	P1938US00	7329
24333	7590	12/20/2007		
GATEWAY, INC. ATTN: Patent Attorney 610 GATEWAY DRIVE MAIL DROP Y-04 N. SIOUX CITY, SD 57049			EXAMINER PATEL, HETUL B	
			ART UNIT	PAPER NUMBER
			2186	
			MAIL DATE	DELIVERY MODE
			12/20/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

mn

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/763,734

Applicant(s)

BURNETT ET AL.

Examiner

Hetul Patel

Art Unit

2186

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-5, 7-13, 16-19, 21 and 23-26.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant alleges

(a) The Talluri system does not necessarily have to "monitor" activity on the "particular server" to be informed that "additional data storage resources are installed", as an operator of the "particular server" may simply inform the Talluri system of the installation of additional storage, without the Talluri system performing any "monitoring of activity indicating that additional disk storage space has been added". It is submitted that this is more likely of the scenarios.

(b) The Abstract of the Ebata patent application leads one of ordinary skill in the art to understand that when an imbalance of free disk occurs, and either the minimum free space on a disk is not present or a minimum number of accesses does not occur, that rebalancing should occur. It is submitted that the Ebata Abstract suggests that the primary consideration for rebalancing is an imbalance in free disk space in the Ebata system, and another condition that may be less than a minimum storage space or less than a minimum disk access. Thus, the minimum free space threshold is not really a "violation" of the minimum amount of free space, as it is only considered after an "imbalance" of free space on the systems is detected.

(c) claim 25 requires "receiving on the one grid computer, from the local user of the one grid Computer, designation of a minimum amount of free disk storage space to be maintained on the disk drive of the one grid computer", which is also submitted to be foreign to Ebata.

(d) Unlike claims 13 and 21, the Ebstyne patent application does not disclose to one of ordinary skill in the art reserving space for local use, but instead discusses a statistical analysis that assumes that 15% of the space on a disk would be "free", but this does not indicate to one of ordinary skill in the art that this space is reserved for any particular purpose, much less reserved for local use. Further, the Ebata patent appears to suggest that free space should be absorbed into the system rather than reserved for any local uses.

Examiner respectfully traverses Applicant's remark for the following reasons:

With respect to (a), the Talluri reference clearly discloses in paragraph [0016] about seamlessly segmenting available data storage capacity on other servers and using a percentage of it for storing data from a particular server, when the data stored on the particular server is approaching the maximum available capacity and the particular server cannot be taken down. In other words, the available data storage capacity is constantly monitored (even after the portion of the storage capacity is assigned from other server(s)) on the particular server to avoid running out of storage capacity on the particular server. Therefore, the claimed "monitoring" step has to be performed by the particular server for detecting that the additional storage space has been assigned/allocated so the "running out of storage capacity flag/situation" in the particular server is removed at least for a while until the newly assigned/allocated storage space fills up.

With respect to (b), the minimum free space threshold is considered as a "violation" of the minimum amount of free space. The abstract of Ebata clearly teaches a method for moving files between storages across the network to rebalance the free disk space across the network. Ebata further teaches the step of monitoring at least one of the grid computers (i.e. at least one of the storage across the network) for activity indicating that a predetermined minimum amount (i.e. the threshold value) of free disk storage space of the total disk storage space on the grid computer has not been maintained (i.e. there is imbalance in available and minimum free disk space) as claimed.

With respect to (c), Examiner disagrees with Applicant and maintains that the "receiving" step of claim 25 is anticipated by the Ebata reference as described in the last office action.

With respect to (d), the Ebstyne reference clearly discloses in paragraph [0031] that "the present invention always leaves 15% of a PC's disk space free, and that data will be stored redundantly across a minimum of four PC's", in other words, 15% of a given PC's disk space is not used for the "virtual storage" to store the foreign data in it, which considered as reserved for the local/given PC use. It is unclear what Applicant mean by "free space should be absorbed into the system" in this argument.



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